

**In the District Court of the United States  
For the District of South Carolina  
BEAUFORT DIVISION**

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2008 MAR -5 P 12: 57

DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON, SC

Rashad T. Graham, #318802,

Plaintiff,

vs.

William Mason, Captain at Kirkland R&E,  
South Carolina Department of Corrections,

Defendant.

Civil Action No. 9:07-1283-CMC-GCK

**REPORT OF MAGISTRATE JUDGE**

The plaintiff brought this action seeking relief pursuant to Title 42, United States Code, Section 1983. On August 3, 2007, defendant filed his first motion for summary judgment. On August 6, 2007, this Court ordered the defendant to file a supplemental brief which was filed on August 21, 2007. On September 10, 2007, the plaintiff filed a response in opposition to the defendant's motion for summary judgment. On October 12, 2007, the defendant filed a motion to withdraw his motion for summary judgment with leave to refile and this motion was granted on the same day.

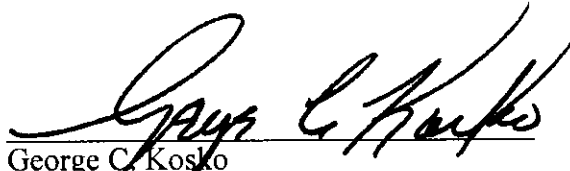
On November 26, 2007, the defendant filed his second motion for summary judgment. On November 27, 2007, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the plaintiff was advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. Despite this explanation, the plaintiff elected not to respond to the motion.

As the plaintiff is proceeding *pro se*, the court filed an order on January 3, 2008, giving the plaintiff an additional twenty days in which to file his response to the motion for summary

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judgment. The plaintiff was specifically advised that if he failed to respond, this action would be dismissed for failure to prosecute.<sup>1</sup> The plaintiff elected not to respond.

Based on the foregoing, it appears the plaintiff no longer wishes to pursue this action. Accordingly, it is recommended that this action be dismissed for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. *Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989), *cert. denied*, 493 U.S. 1084 (1990).

  
George C. Kosko  
United States Magistrate Judge

March 4, 2008

Charleston, South Carolina

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<sup>1</sup> After a litigant has received one explicit warning as to the consequences of failing to timely comply with an order of a Magistrate Judge, and has failed to respond to that order, the district court may, under Fed.R.Civ.P. 41(b), dismiss the complaint based upon the Petitioner's failure to comply with that court order. See *Simpson v. Welch*, 900 F.2d 33, 35-36 (4th Cir.1990); see also *Ballard v. Carlson*, 882 F.2d 93, 95-96 (4th Cir.1989) (holding that district court's dismissal following an explicit and reasonable warning was not an abuse of discretion).

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4<sup>th</sup> Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
P.O. Box 835  
Charleston, South Carolina 29402

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).